

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 16, 2009

AMENDED IN ASSEMBLY MAY 14, 2009

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 957

Introduced by Assembly Member Galgiani

February 26, 2009

An act to add *and repeal* Article 1.8 (commencing with Section 1103.20) ~~to of~~ Chapter 2 of Title 4 of Part 4 of Division 2 of, ~~and to~~ ~~repeal Section 1103.21 of,~~ the Civil Code, relating to real property, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 957, as amended, Galgiani. Residential real estate transfers: title insurance: escrow companies.

Existing law generally regulates the transfer of real property, and imposes specified obligations on a seller of real property. Existing law authorizes a mortgagee or beneficiary under a deed of trust to sell property securing the mortgage or deed of trust at a foreclosure sale under certain circumstances. Existing federal law prohibits a seller of property that will be purchased with the assistance of a federally related mortgage loan from requiring the buyer to purchase insurance from any particular company.

This bill would enact the Buyer's Choice Act, which would prohibit, until January 1, 2015, a mortgagee or beneficiary under a deed of trust who acquired title to residential real property *improved by 4 or fewer dwelling units* at a foreclosure sale from, ~~as a condition of receiving offers or selling that real property to a buyer,~~ requiring, *directly or indirectly, as a condition of selling the property,* that the buyer ~~to~~ purchase title insurance or escrow services in connection with the sale from ~~a company chosen by the seller~~ *particular title insurer or escrow agent*. *This bill would provide that the act does not prohibit a buyer from agreeing to accept a title insurer or an escrow agent recommended by the seller if written notice of the right to make an independent selection is first provided by the seller to the buyer.* A seller who violates these provisions would be liable to the buyer for an amount equal to 3 times all charges made for the title insurance or escrow services.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 1.8 (commencing with Section 1103.20)
2 is added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil
3 Code, to read:

4
5 Article 1.8. Buyer's Choice Act

6
7 1103.20. This article shall be known, and may be cited, as the
8 Buyer's Choice Act.

9 ~~1103.21. (a) A seller shall not, directly or indirectly, as a~~
10 ~~condition of receiving offers or selling residential real property to~~
11 ~~a buyer, require the buyer to purchase title insurance or escrow~~
12 ~~services in connection with the sale of that property from a~~
13 ~~company chosen by the seller.~~

14 1103.21. (a) *The Legislature finds and declares:*

15 (1) *Sales of foreclosed properties have become a dominant*
16 *portion of homes on the resale real estate market.*

17 (2) *The recent troubled real estate market has resulted in a*
18 *concentration of the majority of homes available for resale within*

1 *the hands of foreclosing lenders and has dramatically changed*
2 *the market dynamics affecting ordinary home buyers.*

3 *(3) Preserving the fair negotiability of contract terms is an*
4 *important policy goal to be preserved in real estate transactions.*

5 *(4) The potential for unfairness occasioned by the resale of*
6 *large numbers of foreclosed homes on the market requires that*
7 *protections against abuses be made effective immediately.*

8 *(5) The federal Real Estate Settlement Procedures Act (RESPA)*
9 *creates general rules for fair negotiation of settlement services,*
10 *prohibits kickbacks and specifically prohibits a seller in a federally*
11 *related transaction from requiring a buyer to purchase title*
12 *insurance from a particular insurer.*

13 *(6) California law does not specifically prohibit a seller from*
14 *imposing, as a condition of sale of a foreclosed home, the purchase*
15 *of title insurance or escrow services from a particular insurer or*
16 *provider.*

17 *(7) Therefore it is necessary to add this act to California law*
18 *to provide to a home buyer protection that follows the RESPA*
19 *model and applies to, and prevents, the conditioning of a sale of*
20 *a foreclosed home on the buyer's purchase of title insurance from*
21 *a particular insurer or title company and/or the buyer's purchase*
22 *of escrow services from a particular provider.*

23 *(b) It is the intent of the Legislature that, for the purpose of this*
24 *act, the sale of a residential real property is deemed to include the*
25 *receipt of an offer to purchase that residential real property.*

26 *1103.22. (a) A seller of residential real property improved by*
27 *four or fewer dwelling units shall not require directly or indirectly,*
28 *as a condition of selling the property, that title insurance covering*
29 *the property or escrow service provided in connection with the*
30 *sale of the property be purchased by the buyer from a particular*
31 *title insurer or escrow agent. This section does not prohibit a buyer*
32 *from agreeing to accept the services of a title insurer or an escrow*
33 *agent recommended by the seller if written notice of the right to*
34 *make an independent selection of those services is first provided*
35 *by the seller to the buyer.*

36 *(b) For purposes of this section, "seller" section:*

37 *(1) Escrow service" means service provided by a person*
38 *licensed pursuant to Division 6 (commencing with Section 17000)*
39 *of the Financial Code, or exempt from licensing pursuant to Section*
40 *17006 of the Financial Code.*

1 (2) “*Seller*” means a mortgagee or beneficiary under a deed of
2 trust who acquired title to residential real property *improved by*
3 *four or fewer dwelling units* at a foreclosure sale, including a
4 trustee, agent, officer, or other employee of any such mortgagee
5 or beneficiary.

6 (3) “*Title insurance*” means insurance offered by an insurer
7 admitted in this state to transact title insurance pursuant to Chapter
8 1 (commencing with Section 12340) of Part 6 of the Insurance
9 Code.

10 (c) A seller who violates this section shall be liable *to a buyer*
11 in an amount equal to three times all charges made for the title
12 insurance or escrow service. In addition, any person who violates
13 this section shall be deemed to have violated his or her license law
14 and shall be subject to discipline by his or her licensing entity.

15 (d) A transaction subject to this section shall not be invalidated
16 solely because of the failure of any person to comply with any
17 provision of this act.

18 ~~(e) This section~~

19 1103.23. *This article* shall remain in effect only until January
20 1, 2015, and as of that date is repealed, unless a later enacted
21 statute, that is enacted before January 1, 2015, deletes or extends
22 that date.

23 SEC. 2. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety within
25 the meaning of Article IV of the Constitution and shall go into
26 immediate effect. The facts constituting the necessity are:

27 In order to enact provisions designed to ensure that a seller does
28 not require a residential homebuyer to purchase title insurance or
29 escrow services from a particular company, as soon as possible,
30 it is necessary that this act take effect immediately.